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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

THE PEOPLE,

Plaintiff and Respondent,

v.

THOMAS JAMES LEE,

Defendant and Appellant.

E046177

(Super.Ct.No. FSB801403)

OPINION

APPEAL from the Superior Court of San Bernardino County. Colin J. Bilash, Judge.

Affirmed.

Gerald Peters, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Gary W. Schons, Assistant Attorney General, Peter Quon, Jr., and Quisteen S. Shum, Deputy Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Thomas James Lee challenges three domestic violence probation conditions imposed following his guilty plea to assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1)), and misdemeanor vandalism (Pen. Code, § 594). He contends there was insufficient evidence for the trial court to impose these conditions.

FACTUAL AND PROCEDURAL BACKGROUND

Defendant was arrested on March 29, 2008, after police officers made contact with the victim and her mother at their home. The mother said she was sleeping upstairs, and her daughter and some friends were downstairs in a bedroom. She heard someone banging on the front door, so she went downstairs. When she opened the door, she realized it was defendant, her daughter's boyfriend, and he was angry. She told him to stay away, and she shut and locked the door. However, defendant kicked the door and entered the residence. Upon entry, he pushed the mother backwards and struck her arm with his fist. He then approached the daughter who was standing nearby. He threw her on a sofa, grabbed her neck, and began strangling her with both hands. The mother yelled at him to stop, but he would not listen, so she grabbed a ceramic candleholder and struck him on the back. When she said she was going to call police, he fled the location on foot.

Police located defendant at his residence. He said he was upset and wanted to see his friend, but her mother became very angry, began swearing at him, and slammed the door on his face, so he kicked the door. He also stated he did nothing after that except leave the location.

Pursuant to a plea agreement, defendant pled guilty to assault by means likely to produce great bodily injury (Pen. Code, § 245, subd. (a)(1)) and misdemeanor vandalism (Pen. Code, § 594). Defendant admitted the factual basis for the plea in a written addendum to the plea agreement. All remaining charges were dismissed. In accordance with the plea agreement, the trial court granted defendant three years' probation, subject to various terms and conditions, including 120 days in county jail.

DISCUSSION

Probation condition No. 24 requires defendant to “[s]uccessfully complete a Domestic Violence Batterers’ Program of fifty-two (52) weekly sessions.” Probation condition No. 25 requires defendant to “[p]ay \$400.00 plus a \$35.00 processing fee to be remitted to Domestic Violence fund.” Probation Condition No. 26 requires defendant to “[p]ay \$400.00 to Battered Women’s Shelter plus a ten percent (10%) processing fee.” Defendant contends the trial court erroneously imposed these conditions over his objections even though there is insufficient evidence he was involved in a dating relationship with the victim.

At the time of sentencing, defendant objected to the inclusion of the challenged domestic violence probation conditions, because his relationship with the victim did not meet the definition of a “dating or engagement relationship” under Family Code section 6211. The trial court responded as follows: “As to the . . . domestic violence terms, I am imposing those Both the victim and the defendant in their statements refer to each other as boyfriend and girlfriend. Unless you want to have a formal hearing where we can debate the issue of whether they would actually fall within that parameter, since they’re both

referring to each other in that way, I think that suffices for the purpose of the domestic violence terms.”

“ ‘When an appellant asserts there is insufficient evidence to support the judgment, our review is circumscribed. [Citation.] We review the whole record most favorably to the judgment to determine whether there is substantial evidence—that is, evidence that is reasonable, credible, and of solid value—from which a reasonable trier of fact could have made the requisite finding under the governing standard of proof.’ ” (*In re Jorge G.* (2004) 117 Cal.App.4th 931, 941-942.)

Pursuant to Penal Code section 1203.097, all of the challenged probation conditions are mandatory “[i]f a person is granted probation for a crime in which the victim is a person defined in Section 6211 of the Family Code.” In part, Family Code section 6211 defines “ ‘domestic violence’ ” as “abuse perpetrated against . . . [¶] . . . [¶] (c) A person with whom the respondent is having or has had a dating or engagement relationship.” Family Code section 6210 defines “ ‘dating relationship’ ” as “frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations.”

In *People v. Rucker* (2005) 126 Cal.App.4th 1107, 1110, 1114, the defendant objected to the admission of a prior incidence of domestic violence at trial under Evidence Code section 1109, because she claimed the prior relationship was “ ‘too casual’ ” to be considered a “ ‘dating relationship,’ ” as that term is defined in Family Code section 6210. Reasoning as follows, Division One of this court concluded the defendant’s interpretation of Family Code section 6210 was much too narrow: “The definition of a dating relationship

adopted by the Legislature does not require ‘serious courtship,’ an ‘increasingly exclusive interest,’ ‘shared expectation of growth,’ or that the relationship endures for a length of time. [Citation.] The statutory definition requires ‘frequent, intimate associations,’ a definition that does not preclude a relatively new dating relationship. The Legislature was entitled to conclude the domestic violence statutes should apply to a range of dating relationships. The Legislature could reasonably conclude dating relationships, even when new, have unique emotional and privacy aspects that do not exist in other social or business relationships and those aspects may lead to domestic violence early in a relationship. An individual who engages in domestic violence may have a pattern of abuse that carries over from short-term relationship to short-term relationship.” (*Rucker*, at p. 1116.)

Here, the record includes enough evidence from which the trial court could reasonably infer defendant and the victim were involved in a “dating relationship” as defined by Family Code section 6210. The trial court relied on information about the circumstances of the crime that were included in the probation report. The report indicates the probation officer obtained details about the offense from a police report and from a personal interview with defendant on June 18, 2008. According to the probation report, a police officer spoke with the victim’s mother immediately following the assault, and the mother referred to defendant as her “daughter’s boyfriend.” The victim was crying and was “very hysterical” following the assault and “did not want the defendant to go to jail” or “to be in trouble,” she just wanted him “to leave her alone and stop bothering her.” Defendant was angry with the victim because she did not want to see him on the night of the incident. In a personal interview on June 18, 2008, defendant told the probation officer that “he and

his girlfriend were arguing.” In the interview, he also “appeared to recognize the possible beginnings of a domestic violence history” and admitted “he had attended therapy for anger management issues and he understood that this was another example of an anger management problem.” From these statements, along with the circumstances of the offense, the trial court could reasonably infer there was emotional involvement between defendant and the victim, which is consistent with a “dating relationship.”

In addition, defense counsel declined the trial court’s invitation to conduct an evidentiary hearing to further consider whether there was indeed a “dating relationship” as defined under Family Code section 6210. When defense counsel declined the invitation, the trial court was entitled to take this as a concession that the prosecutor and the probation department would be able to further justify the request for domestic violence conditions with additional evidence of a “dating relationship.”

Based on the foregoing, we conclude there was sufficient evidence to establish defendant and the victim had a “dating relationship” as that term is defined in Family Code section 6210. As a result, we also conclude the trial court was justified in imposing the domestic violence probation terms set forth in subdivision (a) of Penal Code section 1203.097 as a condition of defendant’s probation.

DISPOSITION

The judgment is affirmed.

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RAMIREZ

P. J.

We concur:

GAUT

J.

KING

J.